

AN ORDINANCE OF THE CITY OF LEON VALLEY, TX., CITY COUNCIL AMENDING ARTICLE 6.05 OF THE LEON VALLEY CITY CODE OF ORDINANCES TO BE ENTITLED "SMOKING REGULATIONS" TO INCREASE THE AGE FOR SALE OF TOBACCO PRODUCTS TO 21 YEARS OF AGE; AMENDING SEC. 6.05 TO ADD SEC. 6.05.008; ESTABLISHING ENFORCEMENT AUTHORITY, ESTABLISHING PENALTIES AND FINES FOR VIOLATIONS; PROVIDING FOR PUBLICATION; PROVIDING FOR REPEALER, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 18, 2008, the City Council enacted an ordinance prohibiting smoking in certain public areas, food establishments and the workplace; and

WHEREAS, tobacco use is the foremost preventable cause of premature death in America and causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964; and

WHEREAS, national data show that 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use; and

WHEREAS, in 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and

WHEREAS, nationally, the current amount of health care and lost worker productivity costs each year related to tobacco use is \$300 billion; and

WHEREAS, the City Council of Leon Valley finds that the Texas Health and Safety Code provides that political subdivisions have the authority to more strictly regulate the sale, distribution and use of tobacco products, and that as a home-rule municipality the City of Leon Valley has the further ability to address matters of public health and safety; and now finds that raising the age for the sale of tobacco products to 21 years of age is a matter of public health and safety;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY:

SECTION 1. The current Article 6.05 of the City Code of Leon Valley, Texas, entitled "Smoking Regulations" is hereby amended by adding language to the existing text as set forth in this Ordinance. Article 6.05 is amended as follows:

Section 6.05 is hereby amended to add Section 6.05.008.

Article 6.05 - SMOKING REGULATIONS

Sec. 6.05.008. - **Distribution, display and sale of tobacco products; and cigarette machines.**

(a) **Definition.** For purposes of this section only, the term Tobacco Products means any product that is made from or derived from tobacco and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or an electronic smoking device or liquids used in electronic smoking devices. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(b) Distribution, display, and sale of smoking tobacco products, or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.

(c) **Sale of tobacco products to persons under 21 years of age prohibited.**

(1) A person commits an offense if the person, with criminal negligence:

a. Sells, gives, or causes to be sold or given a tobacco product to someone who is younger than 21 years of age; or

b. Sells, gives, or causes to be sold or given a tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.

(2) It is a defense to prosecution under this subsection that the person to whom the tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(3) A proof of identification satisfies the requirements for this subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(d) **Warning Notice.**

(1) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(2) The sign must include the statement:

**THE SALE OR PROVISION OF TOBACCO OR E-CIGARETTE
PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS
PROHIBITED BY LAW WITHIN THE CITY OF LEON VALLEY.**

(3) The Director shall determine the size and design of the sign.

(4) The Department, on request, shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products.

(e) **Notification to Employees and Agents.**

(1) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that the city code:

a. prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age; and

b. requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 6.05.008(d), requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties;

(2) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of e-cigarettes or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(3) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(4) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a person authorized to enforce the city code, to provide

the forms prescribed by this section.

(5) It is a defense to prosecution under Section 6.05.008(e)(4) to show proof that the employee did complete, sign, and date the forms required by Subsections 6.05.008(e)(2) and (3).

(f) **Cigarette vending machines.**

(1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.

(2) It is a defense to prosecution under the provision of subsection (f)(1) that:

a. The cigarette vending machine is situated in a premise where entry by any person under twenty-one (21) years of age is prohibited by law; or

b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of twenty-one (21) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(g) **Penalty.** A violation of any subsection of Section 6.05.008 is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable as set out below:

(1) A violation of subsections 6.05.008(b) or (f) (1) shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).

(2) A violation of subsections 6.05.008(c), (d) or (e) shall be punishable by a fine of not more than five hundred dollars (\$500.00).

SECTION 2. All other provisions of Article 6.05 of the City Code of Leon Valley, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 3. Violations occurring on or after publication of this Ordinance shall be punished as provided in the revised Article 6.05 of the City Code of Leon Valley, Texas.

SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

SECTION 5. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.


SECTION 6. The publishers of the City Code of Leon Valley, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 7. This Ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION 8. Penalties provided for in this Article 6.05 of the City Code of Leon Valley, Texas shall be effective five days after publication by the City Secretary.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Leon Valley this the 6th day of November 2018.


APPROVED


CHRIS RILEY
MAYOR

Attest:


SAUNDRA PASSAILAIGUE, TRMC, City Secretary

Approved as to Form:


DENISE FREDERICK, City Attorney

